

# sexual harassment at work place



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e-mail:sochara@vsnl.com



# **SEXUAL HARASSMENT AT WORK PLACE**



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# SEXUAL HARASSMENT AT WORK PLACE



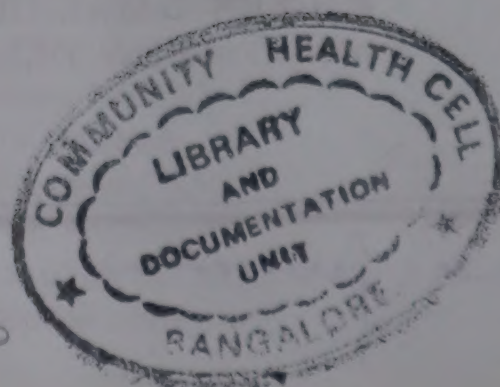
NATIONAL COMMISSION FOR WOMEN

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## PREFACE

The Constitution of India gave to women, the Fundamental Right to equality and the Right not to be discriminated against on grounds of (religion, caste and) sex. Realising the secondary status of women and to undo the injustice done to them, the Constitution included a special provision in Article 15(3), permitting the State to positively discriminate in favour of women by enacting Laws/Provisions so as to ameliorate their social, economic and political condition and to accord them parity. The entire concept of gender equality enshrined in the Constitution would be an exercise in futility if a woman's right to live with dignity or her right to privacy are not regarded as her right to protection of life and liberty guaranteed by Article 21 of the Constitution.

Sexual harassment of women at the workplace violates their sense of dignity and right to earn a living with dignity and is against their fundamental rights and their basic human rights. The International Convention on the Elimination of all forms of Discrimination against Women (CEDAW) adopted in 1979 at Beijing, which has been ratified by India, also recognised the right of women to equality at the work place and it states that women shall not be subjected to sexual harassment at work place; as such harassment vitiates the working environment.

In August, 1997, the Supreme Court, in the matter of *Vishaka v. State of Rajasthan*, recognising the International Conventions and Norms, interpreted gender equality of women, in relation to work and held that sexual harassment of women at the workplace, which is against their dignity, is violative of Articles 14, 15(1) and 21 of the Constitution of India. It is also the violation of the fundamental rights under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Right to life means life with dignity. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance.

The word "sexual harassment" has neither been defined in the Indian Penal Code nor is there any legislation to curb sexual harassment at the workplace. It is obligatory on the Court, under Article 32 of the Constitution, to enforce these



fundamental rights, in the light of the role of the judiciary as envisaged in the Beijing statement of principles of the independence of the judiciary. In the absence of an enacted law to provide for effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work place, the Supreme Court has laid down the guidelines and norms in the *Vishaka* judgement for compliance at all work place/institutions. Under Article 141 of the Constitution, these guidelines and norms of the Supreme Court are required to be treated as **THE LAW OF THE LAND**.

The National Commission for Women (NCW) is a statutory and autonomous body constituted by the Government of India. The primary mandate of the NCW is to seek justice for women, safeguard their rights, and promote women's empowerment.

In 1996, the NCW first took up 'sexual harassment of women at the work place' for examination as one of its focal issues.

NCW, sponsored a study project to survey women, working in both the organised and the unorganised sectors to understand their problems and their attitude when dealing with the issue. This study was commissioned in December, 1996, the terms were later modified a little, in line with the pronouncement of the *Vishaka* judgement. When the Supreme Court laid down guidelines in the *Vishaka* judgement, NCW took up the matter with the Ministries of the Central and State Governments to set up the Complaints Committees.

In 1998, NCW formulated a Code of Conduct for Work Place putting down the Supreme Court guidelines in a simple manner and circulated it widely amongst all the Ministries and Government departments to enable it to percolate down to the lowest functionary. The Commission also circulated the Code to all State Commissions for Women, to NGOs and the apex bodies of the corporate sector (FICCI, ASSOCHAM etc), and to the media.

In order to assess the extent to which the guidelines and norms laid down by the Hon'ble Supreme Court have been implemented and to share the experiences/difficulties faced by the organisations while inquiring into complaints of sexual harassment, the NCW, in November, 2000, initiated a series of meetings with Public Sector Undertakings, Public Sector Banks, Educational Institutions and other organisations. Seven meetings have been held so far, representatives from 186



organisations have participated in the meetings. During the discussions, focus is maintained on the following areas :-

- i) Setting up of the Complaint Committee in the Organisations and its composition;
- ii) Number of Complaints received since the constitution of the Complaint Committee in an organisation;
- iii) The nature of complaints and the manner in which they have been dealt with;
- iv) Exchange of experiences of the organisations and sharing of good practices;
- v) Grey areas that need to be attended to in order to arrive at a clear understanding of the issue;
- vi) How NCW can render assistance;

The meetings are continuing. Next on the Schedule are meetings with representatives of the Corporate Sector.

On the International Women's Day (8th March, 1999), the Commission, brought out a poster on sexual harassment at work place as part of its efforts for creating awareness on the issue. The poster is reproduced on the cover pages. (Copies in Hindi and English are available on request)

The Commission has been dealing with complaints on the subject. Their number is increasing indicating that its incidence is growing in dimension and also that women are shedding their hesitation and reluctance and are coming forward to lodge complaints and seek justice. I would like to take this opportunity to offer on behalf of the Commission, its assistance in intervening for setting up Complaint Committees wherever not done.

The sum and substance of the operational part of the *Vishaka* judgement have been spelt out in the NCW's Code of Conduct for Work place, which is included in this publication. The detailed judgement in the case of *Vishaka v. State of Rajasthan* (1997) and in the case of *Apparel Export Promotion Council v. A.K. Chopra* (1999)

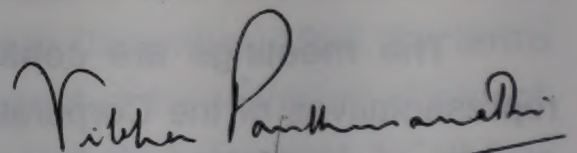


(where the Supreme Court has while reiterating the *Vishaka* pronouncement, expressed even stronger views) are reproduced.

The Commission is in the process of drafting a Bill on Prevention of Sexual Harassment of Women at the Work Place. It is going through the various stages of consultation. However, it is once again emphasized that, till such date as a law comes into being, the pronouncement of Supreme Court in the *Vishaka* case is THE LAW.

This publication is being brought out by the Commission not only to generate awareness and to sensitise, but also as reference material to provide support to the victims and to assist the persons required to implement, be they employees, administrators, the police, the judiciary or NGOs.

We hope this would be a useful guide and will be one step forward in achieving our goal of having workplaces where women can work with dignity and without fear.



**(VIBHA PARTHASARATHI)**

Chairperson

August, 2001



# **Vishaka and others v. State of Rajasthan and others.**

**(AIR 1997 SUPREME COURT 3011)**

*J.S. Verma C.J.I., Mrs. Sujata V.*

*Manohar and B.N. Kirpal, JJ.*

**VERMA, C.J.I. :—** This writ petition has been filed for the enforcement of the fundamental rights of working women under Arts. 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard against such violations: and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

2. The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject-matter of a separate criminal action and no further mention of it; by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.

3. Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Arts. 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Art. 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Art. 32 for the enforcement of these fundamental rights of women. This class action under Art. 32 of the Constitution is



for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Arts. 14, 19 and 21 are brought before us for redress under Art. 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

4. The notice of the petition was given to the State of Rajasthan and the Union of India. The learned Solicitor General appeared for the Union of India and rendered valuable assistance in the true spirit of a Law Officer to help us find a proper solution to this social problem of considerable magnitude. In addition to Ms. Meenakshi Arora and Ms. Naina Kapur who assisted the Court with full commitment. Shri Fali S. Nariman appeared as Amicus Curiae and rendered great assistance. We place on record our great appreciation for every counsel who appeared in the case and rendered the needed assistance to the Court which has enabled us to deal with this unusual matter in the manner considered appropriate for a cause of this nature.

5. Apart from Art. 32 of the Constitution of India, we may refer to some other provisions which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Arts. 14, 19(1)(g) and 21, which have relevance are:

#### Article 15 :

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—

(1) The State shall not discriminate against any citizen on only of religion, race, caste, sex, place of birth or any of them.

(2) xxx    xxx    xxx



(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) xxx    xxx    xxx

Article 42 :

“42. Provision for just and humane conditions of work and maternity relief — The State shall make provision for securing just and humane conditions of work and for maternity relief.”

Article 51A :

“51A. Fundamental duties.— It shall be the duty of every citizen of India;—  
(a) to abide by the Constitution and respect its ideals and institutions. . . .

xxx    xxx    xxx

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

xxx    xxx    xxx”

6. Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are :

Article 51 :

“51. Promotion of international peace and security.— The State shall endeavour to—

xxx    xxx    xxx

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and

xxx    xxx    xxx”



## Article 253 :

“253. Legislation for giving effect to international agreements.— Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”

## Seventh Schedule :

### “List I - Union List :

xxx    xxx    xxx

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

xxx    xxx    xxx”

7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Arts. 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Art. 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Art. 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil.

8. Thus, the power of this Court under Art. 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and to make their fundamental rights



meaningful. Governance of the society by the rule of law mandates this requirement as a logical concomitant of the constitutional scheme. The exercise performed by the Court in this matter is with this common perception shared with the learned Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.

9. The progress made at each hearing culminated in the formulation of guidelines to which the Union of India gave its consent through the learned Solicitor General, indicating that these should be the guidelines and norms declared by this Court to govern the behaviour of the employers and all others at the work places to curb this social evil.

10. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

11. The obligation of this Court under Art. 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are :

“Objectives of the Judiciary :

10. The objectives and functions of the judiciary include the following:

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State.”



12. Some provisions in the ‘Convention on the Elimination of All Forms of Discrimination against Women’, of significance in the present context are:

Article 11 :

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular :

(a) The right to work as an inalienable right of all human beings;

xxx    xxx    xxx

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

xxx    xxx    xxx

Article 24 :

“States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention.”

13. The general recommendations of CEDAW in this context in respect of Art. 11 are:

“Violence and equality in employment :

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.



24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place."

The Government of India has ratified the above resolution on June 25, 1993 with some reservations which are not material in the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made an official commitment, inter alia, to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women's to act as a public defender of women's human rights; to institutionalise a national level mechanism to monitor the implementation of the Platform for Action. We have, therefore, no hesitation in placing reliance on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

14. The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in *Minister for Immigration and Ethnic Affairs v. Teoh*, 128 ALR 353, has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provisions, even in the absence of a Bill of Rights in the Constitution of Australia.

15. In *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746 : (1993 AIR SCW 2366), a provision in the ICCPR was referred to support the view taken that 'an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Art. 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.



16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Art. 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Art. 141 of the Constitution.

The guidelines and norms prescribed herein are as under:—

Having regard to the definition of 'human rights' in S. 2(d) of the Protection of Human Rights Act, 1993,

Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition :

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as :

- a) physical contact and advances;
- b) a demand or request for sexual favours;



- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

### 3. Preventive Step :

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.



#### 4. Criminal Proceedings :

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

#### 5. Disciplinary Action :

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

#### 6. Complaint Mechanism :

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

#### 7. Complaints Committee :

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.



The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative :

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness :

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third Party Harassment :

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

Order accordingly.



# Apparel Export Promotion Council v. A.K. Chopra

(AIR 1999 SUPREME COURT 625)

*Dr. A.S. Anand, C.J.I. And V.N. Khare, J.*

Dr. ANAND, C.J.I. :— Special Leave granted.

2. Does an action of the superior against a female employee which is against moral sanctions and does not withstand test of decency and modesty not amount to sexual harassment? Is physical contact with the female employee an essential ingredient of such a charge? Does the allegation that the superior 'tried to molest' a female employee at the "place of work", not constitute an act unbecoming of good conduct and behaviour expected from the superior? These are some of the questions besides the nature of approach expected from the law Courts to cases involving sexual harassment which come to the forefront and require our consideration.

3. Reference to the facts giving rise to the filing of the present Appeal by Special Leave at this stage is appropriate:

4. The respondent was working as a Private Secretary to the Chairman of the Apparel Export Promotion Council, the appellant herein. It was alleged that on 12-8-1988, he tried to molest a woman employee of the Council, Miss X (name withheld by us) who was at the relevant time working as a Clerk-cum-Typist. She was not competent or trained to take dictations. The respondent, however, insisted that she go with him to the Business Centre at Taj Palace Hotel for taking dictation from the Chairman and type out the matter. Under the pressure of the respondent, she went to take the dictation from the Chairman. While Miss X was waiting for the Director in the room, the respondent tried to sit too close to her and despite her objection did not give up his objectionable behaviour. She later on took dictation from the Director. The respondent told her to type it at the Business Centre of the Taj Palace Hotel, which is located in the Basement of the Hotel. He offered to help her so that her typing was not found fault with by the Director. He volunteered to show her the Business Centre for getting the matter typed and taking advantage of the isolated



place, again tried to sit close to her and touch her despite her objections. The draft typed matter was corrected by Director (Finance) who asked Miss X to retype the same. The respondent again went with her to the Business Centre and repeated his overtures. Miss X told the respondent that she would "leave the place if he continued to behave like that". The respondent did not stop. Though he went out from the Business Centre for a while, he again came back and resumed his objectionable acts. According to Miss X, the respondent had tried to molest her physically in the lift also while coming to the basement but she saved herself by pressing the emergency button, which made the door of the lift to open. On the next day, that is on 16th August, 1988 Miss X was unable to meet the Director (Personnel) for lodging her complaint against the respondent as he was busy. She succeeded in meeting him only on 17th August, 1988 and apart from narrating the whole incident to him orally submitted a written complaint also. The respondent was placed under suspension vide an order dated 18th August, 1988. A charge-sheet was served on him to which he gave a reply denying the allegations and asserting that "the allegations were imaginary and motivated." Shri J.D. Giri, a Director of the Council, was appointed as an Enquiry Officer to enquire into the charges framed against the respondent. On behalf of the management with a view to prove the charges as many as six witnesses were examined including Miss X. The respondent also examined seven witnesses. The Enquiry Officer after considering the documentary and oral evidence and the circumstances of the case arrived at the conclusion that the respondent had acted against moral sanctions and that his acts against Miss X did not withstand the test of decency and modesty. He, therefore, held the charges levelled against the respondent as proved.

5. The Enquiry Officer in his report recorded the following amongst other, findings:

"8.1 Intentions of Shri A.K. Chopra were ostensibly manifested in his actions and behaviour, despite reprimands from Miss X he continued to act against moral sanctions;

8.2 Dictation and subsequent typing of the matter provided Shri A.K. Chopra necessary opportunity to take Miss X to the Business Centre a secluded place. Privacy in the Business Centre room made his ulterior motive explicit and clear.



8.3 Any other conclusion on technical niceties which Shri A.K. Chopra tried to purport did not withstand the test of decency and modesty.”

6. The Enquiry Officer concluded that Miss X was molested by the respondent at Taj Palace Hotel on 12th August, 1988 and that the respondent had tried to touch her person in the Business Centre with ulterior motives despite reprimands by her. The Disciplinary Authority agreeing with the report of the Enquiry Officer, imposed the penalty of removing him from service with immediate effect on 28th June, 1989.

7. Aggrieved, by an order of removal from service, the respondent filed a departmental appeal before the Staff Committee of the appellant. It appears that there was some difference of opinion between the Members of the Staff Committee and the Chairman of the Staff Committee during the hearing, but before any decision could be arrived at by the Staff Committee, the respondent, on the basis of some unconfirmed minutes of the Staff Committee meeting, filed a Writ Petition in the High Court inter alia challenging his removal from service. On January 30, 1992, the writ petition was allowed and respondents Nos. 1 and 3, therein, were directed to act upon the decision of the Staff Committee, assuming as if the decision, as alleged, had been taken at the 34th Meeting of the Staff Committee on 25th July, 1990. The appellant challenged the judgment and order of the High Court dated 30th January, 1992, through Special Leave Petition (Civil) No. 3204 of 1992 in this Court. While setting aside the judgment and order of the High Court dated 30th January, 1992, a Division Bench of this Court opined:

“We have been taken through the proceedings of the meeting starting from 33rd meeting up to 38th meeting by both the learned Counsel appearing for the respective parties. Considering the same it appears to us that the alleged decision taken on the said Agenda No. 5 in the 33rd and 34th meeting is in dispute and final decision on the same has not yet been taken and the alleged resolution on the said Item No. 5 still awaits ratification. In that view of the matter, the High Court was wrong in deciding the disputed question of fact in favour of Respondent No. 1. We, therefore set aside the impugned order of the Delhi High Court as according to us the final decision on the resolution taken on the said Agenda No. 5 has not yet been finally ratified. We are not inclined to consider the other questions sought to be raised in this appeal and the said questions are kept open. In view of the pendency of the



matter for a long time, we direct the appellant-company to convene the meeting of Staff Committee as early as practicable but not exceeding two months from today so that the question of ratification of the resolution on the said Agenda No. 5 taken in the meeting of the Staff Committee is finally decided."

8. Pursuant to the above directions, the Staff Committee met again and considered the entire issue and came to the conclusion that the order passed by the Director General terminating the services of the respondent on 28th June, 1989 was legal, proper and valid. The appeal was dismissed and the removal of the respondent for causing "sexual harassment" to Miss X was upheld. The respondent, thereupon, filed Writ Petition No. 352 of 1995 in the High Court challenging his removal from service as well as the decision of the Staff Committee dismissing his departmental appeal.

9. The learned single judge allowing the writ petition opined "that ... the petitioner tried to molest and not that the petitioner had in fact molested the complainant." The learned single Judge, therefore, disposed of the writ petition with a direction that "the respondent be reinstated in service but that he would not be entitled to receive any back wages. The appellant was directed to consider the period between the date of removal of the respondent from service and the date of reinstatement as the period spent on duty and to give him consequential promotion and all other benefits. It was, however, directed that the respondent be posted in any other office outside Delhi, at least for a period of two years.

10. The appellant being aggrieved by the order of reinstatement filed Letters Patent Appeal No. 27 of 1997 before the Division Bench of the High Court. The respondent also filed Letters Patent Appeal No. 79 of 1997 claiming "back wages and appropriate posting." Some of the lady employees of the appellant on coming to know about the judgment of the learned single Judge, directing the reinstatement of the respondent, felt agitated and filed an application seeking intervention in the pending L.P.A. The Division Bench vide judgment and order dated 15th July, 1997, (reported in 1997 Lab IC 3445) (Delhi), dismissed the L.P.A. filed by the appellant against the reinstatement of the respondent. The Division Bench agreed with the findings recorded by the learned single Judge that the respondent had "tried" to molest and that he had not "actually molested" Miss X and that he had "not managed" to make the slightest



physical contact with the lady and went on to hold that such an act of the respondent was not a sufficient ground for his dismissal from service. Commenting upon the evidence, the Division Bench observed (Paras 4, 5 and 6):

“We have been taken in detail through the evidence/deposition of Miss X. No part of that evidence discloses that A.K. Chopra even managed to make the slightest physical contact with the lady. The entire deposition relates that A.K. Chopra tried to touch her.

As we have said that no attempts made, allegedly by A.K. Chopra, succeeded in making physical contact with Miss X, even in the narrow confines of a Hotel ‘lift’.

To our mind, on such evidence as that was produced before the Enquiry Officer, it is not even possible to come to a conclusion that there is an “attempt to molest” as there have been no physical contact. There being no physical contact between A.K. Chopra and Miss X, there cannot be any attempt to “tried to molest” on the part of A.K. Chopra.”

(Emphasis ours)

11. Aggrieved by the judgment of the Division Bench, the employer-appellant has filed this appeal by special leave.

12. We have heard learned counsel for the parties and perused the record.

13. The Enquiry Officer has found the charges established against the respondent. He has concluded that the respondent was guilty of molestation and had tried to physically assault Miss X. The findings recorded by the Enquiry Officer and the Disciplinary Authority had been confirmed by the Appellate Authority (the Staff Committee) which admittedly had co-extensive powers to re-appreciate the evidence as regards the guilt as well as about the nature of punishment to be imposed on the respondent. The Staff Committee while dealing with the question of punishment has observed:

“Shri Chopra has also mentioned in his appeal that the penalty on him was harsh and disproportionate to the charge levelled against him. On this, the Staff Committee observed that no lenient view would be justified in a case of molestation of a woman employee when the charge was fully proved. Any lenient action in such



a case would have a demoralizing effect on the working women. The Staff Committee, therefore, did not accept the plea of Shri Chopra that a lenient view be taken in his case."

14. The learned single Judge, did not doubt the correctness of the occurrence. He did not disbelieve the complainant. On a re-appreciation of the evidence on the record, the learned single Judge, however, drew his own inference and found that the respondent had "tried to molest" but since he had not "actually molested" the complainant, therefore, the action of the respondent did not warrant removal from service. The learned single Judge while directing the reinstatement of the respondent observed:

"15. In the totality of facts and circumstances, ends of justice would meet if the petitioner is reinstated in service but he would not be entitled to any back wages.

The Council shall consider this period as on duty and would give him consequential promotion to the petitioner. He shall be entitled to all benefits except back wages. The petitioner shall be posted in any other office outside Delhi, at least for a period of two years."

(Emphasis ours)

15. The Division Bench of the High Court also while dismissing the L.P.A. filed by the appellant did not doubt the correctness of the occurrence. It also concluded that since the respondent had not actually molested Miss X and had only tried to assault her and had "not managed" to make any physical contact with her, a case of his removal from service was not made out. Both the learned single Judge and the Division Bench did not doubt the correctness of the following facts:

1. That Miss X was a subordinate employee while the respondent was the superior officer in the organization;

2. That Miss X was not qualified to take any dictation and had so told the respondent;

3. That the respondent pressurized her to come with him to Taj Palace Hotel to take dictation despite her protestation, with an ulterior design;



4. That the respondent taking advantage of his position, tried to molest Miss X and in spite of her protestation, continued with his activities which were against the moral sanctions and did not withstand the test of decency and modesty;

5. That the respondent tried to sit too close to Miss X with ulterior motives and all along Miss X kept reprimanding him but to no avail;

6. That the respondent was repeating his implicit unwelcome sexual advances and Miss X told him that if he continued to behave in that fashion, she would leave the place;

7. That the respondent acted in a manner which demonstrated unwelcome sexual advances, both directly and by implication;

8. That action of the respondent created an intimidated and hostile working environment in so far as Miss X is concerned.

16. The above facts are borne out from the evidence on the record and on the basis of these facts, the departmental authorities keeping in view the fact that the actions of the respondent were considered to be subversive of good discipline and not conducive to proper working in the appellant Organization where there were a number of female employees, took action against the respondent and removed him from service.

17. The High Court appears to have overlooked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the



departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Halton in *Chief Constable of the North Wales Police v. Evans* (1982) 3 All ER 141, observed:

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the Court.”

**18.** Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute, its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

**19.** It is useful to note the following observations of this Court in *Union of India v. Sardar Bahadur* (1972) 4 SCC 618: (1972 Lab IC 627 at Pp. 630-31):

“Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty,



it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials.

If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.”

20. After a detailed review of the law on the subject, this Court while dealing with the jurisdiction of the High Court or Tribunal to interfere with the disciplinary matters and punishment in *Union of India v. Parma Nanda* (1989) 2 SCC 177 : (AIR 1989 SC 1185) opined (at P. 1192 of AIR) :

“We must unequivocally State that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Enquiry Officer or Competent Authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of Legislature or Rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter of exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.”

21. In *B.C. Chaturvedi v. Union of India* (1995) 6 SCC 749 : (1995 AIR SCW 4374), this Court opined (at P. 4379 of AIR SCW):

“The disciplinary authority is the sole Judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a Disciplinary Enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.”

Further it was held (at P. 4380 of AIR SCW):

“A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are



invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

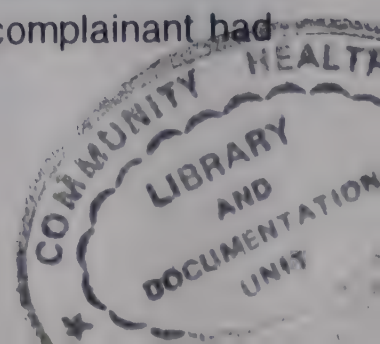
(Emphasis supplied)

22. Again in *Government of Tamil Nadu v. A. Rajapandian* (1995) 1 SCC 216: (1994 AIR SCW 4833) this Court opined (at P. 4834 of AIR):

"It has been authoritatively settled by string of authorities of this Court that the Administrative Tribunal cannot sit as a Court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach different finding than that of the disciplinary authority. The Administrative Tribunal, in this case, has found no fault with the proceedings held by the inquiring authority. It has quashed the dismissal order by re-appreciating the evidence and reaching a finding different than that of the inquiring authority."

(Emphasis ours)

23. In the established facts and circumstances of this case, we have no hesitation to hold, at the outset, that both the learned single Judge and the Division of the High Court fell into patent error in interfering with findings of fact recorded by the departmental authorities and interfering with the quantum of punishment, as if the High Court was sitting in appellate jurisdiction. From the judgments of the learned single Judge as well as the Division Bench, it is quite obvious that the findings with regard to an "unbecoming act" committed by the respondent, as found by the Departmental Authorities, were not found fault with even on re-appreciation of evidence. The High Court did not find that the occurrence as alleged by the complainant had





not taken place. Neither the learned single Judge nor the Division Bench found that findings recorded by the Enquiry Officer or the Departmental Appellate Authority were either arbitrary or even perverse. As a matter of fact, the High Court found no fault whatsoever with the conduct of Enquiry. The direction of the learned single Judge to the effect that the respondent was not entitled to back wages and was to be posted outside the city for at least two years, which was upheld by the Division Bench, itself demonstrates that the High Court believed the complainant's case fully for otherwise neither the withholding of back wages nor a direction to post the respondent outside the city for at least two years, which was upheld by the Division Bench, itself demonstrates that the High Court believed the complainant's case fully for otherwise neither the withholding of back wages nor a direction to post the respondent outside the city for at least two years was necessary. The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. To hold that since the respondent had not "actually molested" Miss X and that he had only "tried to molest" her and had "not managed" to make physical contact with her, the punishment of removal from service was not justified was erroneous. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone. But there is another aspect of the case which is fundamental and goes to the root of the case and concerns the approach of the Court while dealing with cases of sexual harassment at the place of work of female employees.

24. The High Court was examining disciplinary proceedings against the respondent and was not dealing with criminal trial of the respondent. The High Court not find that there was no evidence at all of any kind of "molestation" or "assault" on the person of Miss X. It appears that the High Court re-appreciated the evidence while exercising power of judicial review and gave meaning to the expression "molestation" as if it was dealing with a finding in a criminal trial. Miss X had used the expression "molestation" in her complaint in a general sense and during her evidence she has explained what she meant. Assuming for the sake of argument that



the respondent did not manage to establish any "physical contact" with Miss X, though the statement of management witness Suba Singh shows that the respondent had put his hand on the hand of Miss X when he surprised them in the Business Centre, it did not mean that the respondent had not made any objectionable overtures with sexual overtones. From the entire tenor of the cross-examination to which Miss X was subjected to by the respondent, running into about 17 typed pages and containing more than one hundred & forty questions and answers in cross-examinations, it appears that the effort of respondent was only to play with the use of the expressions "molestation" and "physical assault" by her and confuse her. It was not the dictionary meaning of the word "molestation" or "physical assault" which was relevant. The statement of Miss X before the Enquiry Officer as well as in her complaint unambiguously conveyed in no uncertain terms as to what her complaint was. The entire episode reveals that the respondent had harassed, pestered and subjected Miss X, by a conduct which is against moral sanctions and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances. Such as action on the part of the respondent would be squarely covered by the term "sexual harassment." The following statement made by Miss X at the enquiry:

"When I was there in the Chairman's room I told Mr. Chopra that this was wrong and he should not do such things. He tried to persuade me by talking ..... I tried to type the material but there were so many mistakes. He helped me in typing. There he tried to blackmail me ..... He tried to sit with me. In between he tried to touch me ..... Mr. Chopra again took me to the Business Centre. Thereafter again he tried. I told him I will go out if he does like this. Then he went out. Again he came back. In between he tried."

(Emphasis supplied)

unmistakably shows that the conduct of the respondent constituted an act unbecoming of good behaviour, expected from the superior Officer. Repeatedly, did Miss X state before the Enquiry Officer that the respondent tried to sit close to her and touch her and that she reprimanded him by asking that he 'should not do these things.' The statement of Miss Rama Kanwar, the management witness to the effect that when on 16th August she saw Miss X and asked her the reason for being upset,



Miss X kept on weeping and told her "she could not tell being unmarried, she could not explain what had happened to her." The material on the record, thus, clearly establishes an unwelcome sexually determined behaviour on the part of the respondent against Miss X which was also an attempt to outrage her modesty. Any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment. The evidence on the record clearly establishes that the respondent caused sexual harassment to Miss X, taking advantage of his superior position in the Council.

25. Against the growing social menace of sexual harassment of women at the work place, a three Judge Bench of this Court by a rather innovative judicial law making process issued certain guidelines in *Vishaka v. State of Rajasthan* (1997) 6 SCC 241 : (1997 AIR SCW 3043), after taking note of the fact that the present civil and penal laws in the country do not adequately provide for specific protection of woman from sexual harassment at places of work and that enactment of such a legislation would take a considerable time. In *Vishaka's* case (*supra*), a definition of sexual harassment was suggested. Verma, J., (as the former Chief Justice then was), speaking for the three-Judge Bench opined:

"2 Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually-coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary,



whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.”

26. An analysis of the above definition, shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advance, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her.

27. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty — the two most precious Fundamental Rights guaranteed by the Constitution of India. As early as in 1993 at the ILO Seminar held at Manila, it was recognized that sexual harassment of woman at the work place was a form of ‘gender discrimination against woman.’ In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the Courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such violations, admits of no debate. The message of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (“CEDAW”) and the Beijing Declaration which directs all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear. The International Covenant on Economic, Social and Cultural Rights contains several provisions particularly important for women.



Article 7 recognises her right to fair conditions of work and reflects that women shall not be subjected to sexual harassment at the place of work which may vitiate working environment. These international instruments cast an obligation on the Indian State to gender sensitise its laws and the Courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. This Court has in numerous cases emphasised that while discussing constitutional requirements, Court and counsel must never forget the core principle embodied in the International Conventions and Instruments and as far as possible give effects to the principles contained in those international instruments. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law. (See with advantage — *Prem Sankar v. Delhi Administration*, AIR 1980 SC 1535; *Mackinnon Mackenzie and Co. v. Audrey D. Costa*, (1987) 2 SCC 469, (1987) 2 JT (SC) 34 : (AIR 1987 SC 1281), *Sheela Barse v. Secretary, Children's Aid Society*, (1987) 3 SCC 50 at P. 54 : (AIR 1987 SC 656 at Pp. 658-659), *Vishaka v. State of Rajasthan* (1997) 7 JT (SC) 384 : (1997 AIR SCW 3043), *People's Union, for Civil Liberties v. Union of India*, (1997) 2 JT (SC) 311 : (1997 AIR SCW 1234) and *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416 at P. 438 : (1997 AIR SCW 233 at Pp. 248-249)

28. In cases involving violation of human rights, the Courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field. In the instant case, the High Court appears to have totally ignored the intent and content of the International Conventions and Norms while dealing with the case.

29. The observations made by the High Court to the effect that since the respondent did not "actually molest" Miss X but only "tried to molest" her and, therefore, his removal from service was not warranted rebel against realism and lose their sanctity and credibility. In the instant case, the behaviour of respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer. In a case involving charge of sexual harassment or attempt to sexually molest, the Courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or dictionary meaning



of the expression "molestation." They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the Courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against the junior female employee, Miss X was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like is bound to have demoralizing effect on the woman employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant, was, thus, commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review.

30. At the conclusion of the hearing, learned counsel for the respondent submitted that the respondent was repentant of his actions and that he tenders an unqualified apology and that he was willing to also go and to apologize to Miss X. We are afraid, it is too late in the day to show any sympathy to the respondent in such a case. Any lenient action in such a case is bound to have demoralizing effect on working women. Sympathy in such cases is uncalled for and mercy is misplaced.

32. Thus, for what we have said above the impugned order of the High Court is set aside and the punishment as imposed by the Disciplinary Authority and upheld by the Departmental Appellate Authority of removal of the respondent from service is upheld and restored. The, appeals, thus succeed and are allowed. We, however, make no order as to costs.

Appeals allowed.



# CODE OF CONDUCT FOR WORK PLACE\*

Sexual harassment is a serious criminal offence which can destroy human dignity and freedom. In an effort to promote the well being of all women employees at the work place the following code of conduct has been prescribed :-

1. It shall be the duty of the employer to prevent or deter the commission of any act of sexual harassment at the work place.
2. Sexual harassment will include such unwelcome sexually determined behaviour by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as :-
  - (i) Eve-teasing
  - (ii) Unsavoury remarks
  - (iii) Jokes causing or likely to cause awkwardness or embarrassment
  - (iv) Innuendos and taunts
  - (v) Gender based insults or sexist remarks
  - (vi) Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls) and the like
  - (vii) Touching or brushing against any part of the body and the like
  - (viii) Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings.
  - (ix) Forcible physical touch or molestation
  - (x) Physical confinement against one's will and any other act likely to violate one's privacy

and includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex, only on the ground of sex.

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*\*In accordance with the Supreme Court Judgement on "Sexual Harassment of Women at Workplace in Vishakha & others Vs. State of Rajasthan & others (AIR 1997 SC 3011).*



**Explanation :-** Where any comment, act or conduct is committed against any person and such person has a reasonable apprehension that,

1. it can be humiliating and may constitute a health and safety problem, or
2. it is discriminatory, as for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or study, including recruitment or promotion or advancement or when it creates a hostile environment, or
3. it would result in adverse consequences if she does not consent to the conduct or raises any objection, it shall be deemed to be sexual harassment.

3. **Eve-Teasing :-**

Eve-teasing will include any person wilfully and indecently exposing his person in such a manner as to be seen by other employees or use indecent language or behave indecently or in a disorderly manner in the work place. It will also include any word, gesture or act intended to insult the modesty of a woman by making any sound or gesture or exhibit any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such women or intrudes upon the privacy of a woman employee.

4. Sexual harassment of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her in a manner which prevents or impairs the employee's full utilisation of employment benefits or opportunities. It also includes behaviour that covertly or overtly uses the power inherent in the status of the employer or the head of the institution or management to affect negatively an employee's work experience or career opportunities and/or to threaten, coerce or intimidate an employee to accept sexual advances or making employment decision affecting the individual or create an intimidating, hostile or offensive working environment.
5. It shall be the duty of the employer to prevent or deter the committing of any act of sexual harassment at the work place.
6. All employers should take appropriate steps to prevent sexual harassment of any nature. Express prohibition of sexual harassment should be notified at the



work place and also published for the general information of the employees and evaluated in an appropriate manner periodically.

7. Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards women at the work place and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment in that organisation.
8. Women employees should not be treated as sex objects.
9. No male employee shall outrage or insult the modesty of a female employee at the work place.
10. No male employee shall make any type of sexual advances to woman colleagues or woman subordinates.
11. The head of the organisation shall constitute a Complaints Committee as specified in the judgement of the Supreme Court, i.e., the Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels such Complaints Committee should involve a third party either a non-governmental organisation or other body who is familiar with the issue of sexual harassment.
12. **Conducting enquiry by the Complaints Committee :-**
  - (i) Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident.
  - (ii) The complaint shall contain all the material and relevant details concerning the alleged sexual harassment including the names of the contravenor and the complaint shall be addressed to the Complaints Committee.
  - (iii) If the complainant feels that she cannot disclose her identity for any particular reason the complainant shall address the complaint to the head of the organisation and hand over the same in person or in a sealed cover. Upon receipt of such complaint the head of the organisation shall retain the original



complaint with himself and send to the Complaints Committee a gist of the complaint containing all material and relevant details other than the name of the complaint and other details which might disclose the identity of the complainant.

13. The Complaints Committee shall take immediate necessary action to cause an enquiry to be made discreetly or hold an enquiry, if necessary.
14. The Complaints Committee shall after examination of the complaint submit its recommendations to the head of the organisation recommending the penalty to be imposed.
15. The head of the organisation, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being heard to the person complained against submit the case with the Committee's recommendations to the management.
16. The Management of the Organisation shall confirm with or without modification the penalty recommended after duly following the prescribed procedure.
17. **Disciplinary Action :**

Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

18. **Workers' Initiative :**

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate fora and it should be affirmatively discussed in periodical employer-employee meetings.

19. **Third Party harassment :**

Where sexual harassment occurs as a result of an act or omission by any third party or outsider the employer and the persons incharge shall take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.



## **20. Annual Report :**

The Complaints Committee shall prepare an Annual Report giving a full account of its activities during the previous year and forward a copy thereof to the Head of the Organisation concerned who shall forward the same to the government department concerned with its comments.

## **Savings :-**

Nothing contained in this code shall prejudice any right available to the employee or prevent any person from seeking any legal remedy under the National Commission for Women Act 1990, Protection of Human Rights Commission Act 1993 or under any other law for the time being in force.

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

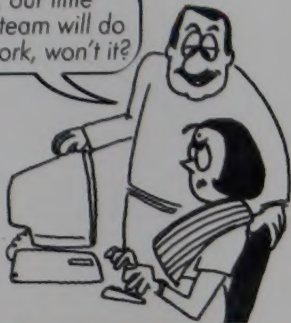






## at work...

Tonight, our little project team will do great work, won't it?



Making sexual advances or demanding sexual favours

I like to see the female body in its natural form...



Displaying pornographic material at the workplace

Stop this or I'll complain...

Then I'll stop your promotion...



Threatening adverse consequences on raising objections or resisting advances

Making babies is all you women are good for



Using gender based insults



Cracking jokes which cause awkwardness or embarrassment

You're just a woman. We need a man for this assignment!



Discriminating on the basis of gender

## or anywhere else



Standing too close and trying to touch or feel

Arrey, you are like my beti...



Hugging or touching on some pretext



Molestation

Sexy sexy sexy mujhe log bole...



Singing embarrassing film songs



Making obscene gestures or using indecent language

Hello baby!



Trying to touch women on the road

National Commission for Women

4 Deen Dayal Upadhyaya Marg, New Delhi-110 002 Phone : 323 7166, 323 4918, 323 6988

E-mail : mahila@alfa.nic.in Website : www@nationalcommissionforwomen.org